IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2923 OF 1994

ALONG WITH

CRIMINAL APPLICATION NO.2924 OF 1994

M/s.Indian Drugs & Pharmaceuticals
Ltd. & Ors. ...Applicants

Versus

M/s.Shree Trading Corporation & Anr. ...Respondents

.....

Mr.M.M.Patel for Applicants.

None for Respondent No.1.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 24, 2005.

P.C.

1. Heard Counsel for the Applicants and Mr.Konde-Deshmukh, A.P.P. for Respondent No.2. None appears for Respondent No.1 though served.

2. The Respondent No.1 has launched criminal action against the Applicants for offence punishable under Section 138 of the Negotiable

Instruments Act in respect of dishonoured cheques referred to in Paragraph 3 of the complaint, which were issued for and on behalf of the Applicant No.1 Company. It is seen that the Applicant No.11 is the signatory to the cheque. Insofar as Applicant Nos.2 to 10 and 12 to 14 are concerned, they have been named in the complaint only because of the fact that they held some position in the Company on a vague averment, so as to make them liable in respect of the offence committed by the Company.

3. Even on reading the complaint as a whole, there is no specific averment, insofar as these Applicants 2 to 10 and 12 to 14 are concerned, so as to indicate their complicity in the commission of the offence as is required by Section 141 of the Act. A vague averment is made that accused are liable with regard to the dishonoured cheques and they have failed and neglected to pay the amount in question. Such averment is not enough to make an Officer or for that matter, a Director of the Company liable for the offence committed by the Company. Recently, I had occasion to examine these aspects in the case of **Vijay Mallya vs. State of**

Maharashtra & Anr. decided on 23rd December 2004 in Criminal Application No.4827 of 2004, which squarely applies to the fact situation of the present case. The Application should succeed only insofar as Applicants 2 to 10 and 12 to 14 are concerned.

4. It is, however, made clear that during the trial of the case against the remaining accused, if some evidence comes on record, so as to indicate the complicity of the Applicants 2 to 10 and 12 to 14, in that case, it will be open to the Trial Court to proceed against those Applicants in accordance with law, in view of the observations made by the Apex Court in **A.I.R. 1983 SC 67 in the case of M.C.D. vs. Ram Kishan Rohtagi (see Para 19).**

5. Needless to observe that the Trial Court will decide the matter on its own merits, in accordance with law on the basis of the evidence adduced before it.

6. Application succeeds on the above terms.

A.M.KHANWILKAR, J.